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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,073	12/20/2001	William C. Dengler	2824/1	9825
7590 06/16/2006 Adams, Schwartz & Evans, P.A. 2180 Two First Union Center Charlotte, NC 28282			EXAMINER BLECK, CAROLYN M	
			ART UNIT 3626	PAPER NUMBER

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,073

Applicant(s)

DENGLER, WILLIAM C.

Examiner

Carolyn M. Bleck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is response to the amendment filed on 15 May 2006.
Claims 33-49 are pending. Claims 33, 36-37, 39-40, and 43-44 have been amended.
Claims 47-49 are newly added.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665), for substantially the same reasons given in the previous Office Action. Further reasons appear below.

(A) Claim 33 has been amended to recite:

(1) "selecting a plurality of tests" to be conducted "on the patient, the tests" selected to diagnose the selected "medical condition" or an aspect thereof; and "storing in the database a list of the tests so as to enable tracking of the completion status of the tests using the computer;"

(2) “for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible results for that test; and storing the subset of test results in the database;” and

(3) creating a summary “which simultaneously displays the subsets of test results for all of the selected tests” for use by a health care provider in selecting a treatment track for treatment of the “selected condition” based on the test results, and storing the summary in the database.”

As per these newly added limitations, the Examiner respectfully submits that Coli discloses:

(1) “selecting a plurality of tests” to be conducted “on the patient, the tests” selected to diagnose the selected “medical condition” or an aspect thereof (Fig. 6, col. 11 line 27 to col. 12 line 37) and “storing in the database a list of the tests so as to enable tracking of the completion status of the tests using the computer” (Fig. 3, 9-11, col. 13 line 29 to col. 14 line 67);

(2) “for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible results for that test; and storing the subset of test results in the database;” (Fig. 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (see Fig. 10 and 18 – ability to select the dates for reporting, where the test results, including the results in that date range are stored in the database);

(3) creating a summary “which simultaneously displays the subsets of test results for all of the selected tests” for use by a health care provider in selecting a treatment track for treatment of the “selected condition” based on the test results, and

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storing the summary in the database” (Fig. 10, 12, 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (It is noted that Coli discloses generating a cumulative report of data in selected data ranges for use by a healthcare provider for treatment of a disease or medical condition. As per the recitation of simultaneously, note the discussion of transmitting a data stream from a server to the client in Coli (col. 14 lines 1-15). This is considered to be a form of simultaneously).

The remaining amendments to the claims and the limitations addressed in the previous Office Action are rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) Claims 34-35 and 38 have not been amended and are rejected for the same reasons given in the prior Office Action.

(C) The amendments to claims 36-37 and 39 appear to have been made to lack of antecedent basis issues, but otherwise do not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action.

As such the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

4. Claims 40-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665) and Teagarden et al.

(6,104,631), for substantially the same reasons given in the previous Office Action.

Further reasons appear below.

(A) As per claim 40 and the newly added limitations, the Examiner respectfully submits that Coli discloses:

(1) "selecting a plurality of tests" to be conducted "on the patient, the tests" selected to diagnose the selected "medical condition" or an aspect thereof (Fig. 6, col. 11 line 27 to col. 12 line 37) and "storing in the database a list of the tests so as to enable tracking of the completion status of the tests using the computer" (Fig. 3, 9-11, col. 13 line 29 to col. 14 line 67);

(2) "for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible results for that test; and storing the subset of test results in the database;" (Fig. 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (see Fig. 10 and 18 – ability to select the dates for reporting, where the test results, including the results in that date range are stored in the database);

(3) creating a summary "which simultaneously displays the subsets of test results for all of the selected tests" for use by a health care provider in selecting a treatment track for treatment of the "selected condition" based on the test results, and storing the summary in the database" (Fig. 10, 12, 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (It is noted that Coli discloses generating a cumulative report of data in selected data ranges for use by a healthcare provider for treatment of a disease or medical condition. As per the recitation of simultaneously, note the discussion of

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transmitting a data stream from a server to the client in Coli (col. 14 lines 1-15). This is considered to be a form of simultaneously).

The remaining amendments to the claims and the limitations addressed in the previous Office Action are rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) Claims 41-42 and 45-46 have not been amended and are rejected for the same reasons given in the prior Office Action.

(C) The amendments to claims 43-44 appear to have been made to lack of antecedent basis issues, but otherwise do not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action.

As such the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

(D) As per claims 47 and 48, Coli teaches tests focusing on basic hematology, urinalysis, basic chemistry, special chemistry, and microbiology (col. 3 lines 1-5). Applicant recites such tests as endoscopy, esophageal manometry, ph monitoring, X-rays, and gallbladder ultrasound. The Examiner respectfully submits that these tests, while not expressly disclosed in the Coli, Bair, and Teagarden references, are well known in the medical testing arts. For example, patients routinely undergo X-rays, endoscopies, and ph monitoring when being diagnosed and treated by physicians.

Thus, at the time the invention was made, it would have been obvious to modify the teachings of Coli, Bair, and Teagarden to include these medical tests with the motivation of properly diagnosing a patient's medical condition.

5. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665), as applied to claim 33, and further in view of Kraftson (6,151,581).

(A) As per claim 49, Coli and Bair fail to expressly disclose (a) creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule; and (b) receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results in the database.

Kraftson discloses (a) creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule (Fig. 1, 13, col. 20 line 41 to col. 21 line 24); and (b) receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results in the database (Fig. 13, col. 20 line 41 to col. 21 line 24).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Kraftson within the method taught collectively by Coli and Bair with the motivation of measuring the degree of patient satisfaction with patient treatment (Kraftson; col. 1 lines 40-57).

Response to Arguments

6. Applicant's arguments filed 15 May 2006 have been fully considered but they are not persuasive. Applicant's arguments will be addressed below in the order in which they appear in the response filed 15 May 2006.

(A) In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 15 May 2006 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Coli, Bair, Teagarden, and/or Kraftson based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action, and incorporated herein.

It is noted one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, it is respectfully submitted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of

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the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (571) 272-6767. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (571) 272-6776.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(571) 273-8300 [Official communications]

(571) 273-8300 [After Final communications labeled "Box AF"]

(571) 273-6767 [Informal/ Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to the Knox Building, Alexandria, VA.


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CB

June 2, 2006


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER